

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

SESSION LAW 2012-11
HOUSE BILL 925

AN ACT TO REQUIRE A VOTE OF THE RESIDENTS PRIOR TO THE ADOPTION OF
AN ANNEXATION ORDINANCE INITIATED BY A MUNICIPALITY.

The General Assembly of North Carolina enacts:

SECTION 1. Part 7 of Article 4A of Chapter 160A of the General Statutes is amended by adding a new section to read:

"§ 160A-58.64. Referendum prior to involuntary annexation ordinance.

(a) After the adoption of the resolution of intent under this Part, the municipality shall place the question of annexation on the ballot. The municipal governing board shall notify the appropriate county board or boards of elections of the adoption of the resolution of intent and provide a legible map and clear written description of the proposed annexation area.

(b) In accordance with G.S. 163-58.55, the municipal governing board shall adopt a resolution setting the date for the referendum and so notify the appropriate county board or boards of elections.

(c) The county board or boards of elections shall cause legal notice of the election to be published. That notice shall include the general statement of the referendum. The referendum shall be conducted, returned, and the results declared as in other municipal elections in the municipality. Only registered voters of the proposed annexation area shall be allowed to vote on the referendum.

(d) The referendum of any number of proposed involuntary annexations may be submitted at the same election; but as to each proposed involuntary annexation, there shall be an entirely separate ballot question.

(e) The ballots used in a referendum shall submit the following proposition:

" FOR AGAINST

The annexation of (clear description of the proposed annexation area)."

(f) If less than a majority of the votes cast on the referendum are for annexation, the municipal governing body may not proceed with the adoption of the annexation ordinance or begin a separate involuntary annexation process with respect to that proposed annexation area for at least 36 months from the date of the referendum. If a majority of the votes cast on the referendum are for annexation, the municipal governing body may proceed with the adoption of the annexation ordinance under G.S. 160A-58.55."

SECTION 2. G.S. 160A-58.55 reads as rewritten:

"§ 160A-58.55. Procedure for annexation.

(a) **Resolution of Consideration.** – Any municipal governing board desiring to annex territory under the provisions of this Part shall first pass a resolution of consideration identifying the area under consideration for annexation by either a metes and bounds description or a map. The resolution of consideration shall remain effective for two years after adoption and be filed with the municipal clerk. A new resolution of consideration adopted before expiration of the two-year period for a previously adopted resolution covering the same area shall relate back to the date of the previous resolution. Adoption of a resolution of consideration shall not confer prior jurisdiction over the area as to any other municipality.

(b) **Notice of Resolution of Consideration.** – A notice of the adoption of the resolution of consideration shall be published once a week for two successive weeks, with each publication being on the same day of the week, in a newspaper having general circulation in the municipality. The second publication shall be no more than 30 days following adoption of the resolution of consideration. The resolution of consideration shall contain a map or description of the area under consideration and a summary of the annexation process and time lines. A



copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the property owners of real property located within the area under consideration for annexation as shown by the tax records of the county. If a proposed annexation extends across a county border into a county other than the county where the majority of the area of the existing municipality is located, a copy of the resolution of consideration shall be mailed within 30 days after the adoption of the resolution of consideration by first class mail to the clerk of the board of county commissioners of that county.

(c) Resolution of Intent. – At least one year after adoption of the resolution of consideration, the municipal governing body may adopt a resolution of intent of the municipality to proceed with the annexation of some or all of the area described in the resolution of consideration. The resolution of intent shall describe the boundaries of the area proposed for annexation, fix a date for a public informational meeting, ~~and fix a date for a public hearing on the question of annexation, and fix a date for the referendum on annexation.~~ The date for the public informational meeting shall be not less than 45 days and not more than 55 days following passage of the resolution of intent. The date for the public hearing shall be not less than 130 days and not more than 150 days following passage of the resolution of intent. The date of the referendum on annexation shall be set for the next municipal general election that is more than 45 days from the date of the resolution of intent.

(d) Notice of Public Informational Meeting, Public Hearing, and Opportunity for Water and Sewer. – A combined notice of public informational meeting and public hearing shall be issued as provided for in this subsection as follows:

- (1) The notice shall be a combined notice that includes at least all of the following:
 - a. The date, hour, and place of the public informational meeting.
 - b. The date, hour, and place of the public hearing.
 - c. A clear description of the boundaries of the area under consideration, including a legible map of the area.
 - d. A statement that the report required by G.S. 160A-58.53 will be available at the office of the municipal clerk.
 - e. An explanation of a property owner's rights under this section.
 - f. A summary of the annexation process with time lines.
 - g. A summary of the opportunity to vote in the referendum and available statutory remedies for denying and appealing the annexation and the failure to provide services.
 - h. Information on how to request to become a customer of the water and sewer service, all forms to request that service, and the consequences of opting in or opting out, as provided in G.S. 160A-58.56.
 - i. A clear description of the distinction between the public informational meeting and the public hearing.
- (2) The combined notice shall be given by publication of the information required by sub-subdivisions (1)a., b., and c. of this subsection and a statement regarding the availability of the information required by the remaining sub-subdivisions of subdivision (1) of this subsection in a newspaper having general circulation in the municipality once a week for at least two successive weeks prior to the date of the public informational meeting, with each publication being on the same day of the week. The date of the last publication shall be not more than 10 days preceding the date of the public informational meeting. In addition thereto, if the area proposed to be annexed lies in a county containing less than fifty percent (50%) of the land area of the municipality, the same publication shall be given in a newspaper having general circulation in the area of proposed annexation. If there is no such newspaper, the municipality shall post the notice in at least five public places within the municipality and at least five public places in the area to be annexed for 30 days prior to the date of public informational meeting.
- (3) The combined notice, together with the information about requesting water and sewer service, shall be mailed within five business days of the passage of the resolution of intent by first class mail to the property owners of real

property located within the area to be annexed as shown by the tax records of the county. The person or persons mailing such notices shall certify to the governing board that fact, and such certificate shall become a part of the public record of the annexation proceeding and shall be deemed conclusive in the absence of fraud. If a notice is returned to the municipality by the postal service by the tenth day before the informational meeting, a copy of the notice shall be sent by certified mail, return receipt requested, at least seven days before the informational meeting. Failure to comply with the mailing requirement of this subsection shall not invalidate the annexation unless it is shown that the requirements were not substantially complied with.

- (4) If the governing board by resolution finds that the tax records are not adequate to identify the property owners within the area to be annexed after exercising reasonable efforts to locate the property owners, it may, in lieu of the mail procedure required by subdivision (3) of this subsection, post the notice at least 30 days prior to the date of the public informational meeting on all buildings, on such parcels, and in at least five other places within the area to be annexed as to those parcels where the property owner could not be so identified. In any case where notices are placed on property, the person placing the notice shall certify that fact to the governing board.

(e) Action Prior to Informational Meeting. – At least 30 days before the date of the public informational meeting, the municipal governing board shall do all of the following:

- (1) Approve the report provided for in G.S. 160A-58.53.
- (2) Prepare a summary of the approved report for public distribution.
- (3) Post in the office of the clerk all of the following:
 - a. The approved report provided for in G.S. 160A-58.53.
 - b. The summary of the approved report.
 - c. A legible map of the area to be annexed.
 - d. The list of the property owners, and associated mailing addresses, in the area to be annexed that the municipality has identified and mailed notice.
 - e. Information for property owners on how to request to become a customer of the water service or sewer service and all forms to request that service.
- (4) If the municipality has a Web site, post on that Web site all of the information under this section together with any forms to apply for water and sewer service.
- (5) Prepare a summary of the opportunity to vote in the referendum and available substantive statutory remedies for ~~denying and~~ appealing the annexation for public distribution.

(f) Public Informational Meeting. – At the public informational meeting, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53 and an explanation of the provision of major municipal services. The explanation of the provision of services shall include how to request water service or sewer service to individual lots, the average cost of a residential connection to the water and sewer system, and the opportunity for installation of a residential connection under G.S. 160A-58.56. A summary of the annexation process with time lines, a summary of opportunity to vote in the referendum and available statutory remedies for ~~denying and~~ appealing the annexation, an explanation of the provision of services, and information for requesting water service or sewer service to individual lots and any forms to so request shall also be distributed at the public informational meeting. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality shall be given the opportunity to ask questions and receive answers regarding the proposed annexation.

(g) Public Hearing. – At the public hearing, a representative of the municipality shall first make an explanation of the report required in G.S. 160A-58.53. Following such explanation, all property owners and residents of the area proposed to be annexed as described in the notice of public informational meeting and hearing, and all residents of the municipality, shall be given an opportunity to be heard.

(h) The municipal governing board shall take into consideration facts presented at the public hearing and shall have authority to amend the report required by G.S. 160A-58.53 to make changes in the plans for serving the area proposed to be annexed so long as such changes meet the requirements of G.S. 160A-58.53. At any regular or special meeting held no sooner than the tenth day following the ~~public hearing and not later than 90 days following the public hearing,~~ certification of the election held under G.S. 160A-58.64, the governing board shall have authority to adopt an ordinance, subject to subsection (i) of this section, extending the corporate limits of the municipality to include all, or part, of the area described in the notice of public hearing which the governing board has concluded should be annexed. The annexation ordinance shall:

- (1) Contain specific findings showing that the area to be annexed meets the requirements of G.S. 160A-58.54.
- (2) Describe the external boundaries of the area to be annexed by metes and bounds.
- (3) Include a statement of the intent of the municipality to provide services to the area being annexed as set forth in the report required by G.S. 160A-58.53 and a time line for the provision of those services.
- (4) Contain a specific finding that on the effective date of annexation, the municipality will have funds appropriated in sufficient amount to finance construction of any water and sewer lines stated in the report required by G.S. 160A-58.53 to extend the water and sewer services into the area to be annexed, or that on the effective date of annexation the municipality will have authority to issue bonds in an amount sufficient to finance such construction. If authority to issue such bonds shall be secured from the electorate of the municipality prior to the effective date of annexation, then the effective date of annexation shall be no earlier than the day following the statement of the successful result of the bond election.
- (5) Fix the effective date for annexation as June 30 next following the adoption of the ordinance or the second June 30 following adoption of the ordinance, but not before the completion of the water and sewer request ~~and petition to deny and appeal periods are complete.~~
- (6) Together, with the list of the property owners of parcels within the area described in the annexation ordinance to which a notice was mailed under subsection (d) of this section, be delivered within five business days to the tax assessor and the board of elections of the county in which a majority of the municipality lies.
- (7) ~~Be summarized, and sent in accordance with subsection (i) of this section, to the list of the property owners within the area described in the annexation ordinance to which a notice was mailed under subsection (d) of this section together with a blank petition form, preprinted with name and address of the property owner.~~
- (8) ~~If a public body has a Web site, conspicuously post a copy of the petition to deny annexation ordinance that a property owner in the real property located within the area described in the annexation ordinance may download, complete, and return to the county board of elections in accordance with subsection (i) of this section.~~ notice of the referendum until after the certification of the election.

(i) ~~Petition-Referendum Vote to Deny~~ Petition-Referendum Vote to Deny Annexation Ordinance. – The following procedures ~~in G.S. 160A-58.64 shall apply to this subsection:~~

- (1) ~~Upon receipt of the resolution of intent and a list of property owners of the real property located within the area, the county tax assessor shall prepare a list of the real property parcels within the area, and forward it to the board of elections in the county where a majority of the parcels proposed for annexation are located. The board of elections shall prepare petitions for property owners of the real property located within the area described in the resolution of intent to sign opposing the annexation ordinance.~~
- (2) ~~A petition shall include the names of the property owners of the parcel of real property listed individually, a signature line for each owner, and a statement that the person signing is petitioning to deny the annexation.~~

- (3) ~~The board of elections shall mail a petition to the address of record for those real property owners within five business days of receipt from the county tax assessor of the list.~~
- (4) ~~The board of elections shall provide two methods by which property owners of the real property located within the area described in the annexation ordinance may sign a petition form prepared by the board of elections: (i) in person or (ii) by submitting the signed petition form by mail. The board of elections shall also accept signatures signed on a petition form prepared by the board of elections, but collected by another, if that petition form is returned to the board of elections in a sealed container.~~
- (5) ~~If the signed petition is one that was mailed under subdivision (h)(7) of this section and the signer is not the same as the preprinted name on the form, the signed petition shall be notarized and accompanied by a copy of the legal authority for the signature of the person signing a petition.~~
- (6) ~~If a petition is returned as undeliverable to the board of elections, the board of elections shall send the petition return receipt requested. If the petition is returned again, the board of elections shall not include that property owner in the total number of eligible property owners.~~
- (7) ~~If there is a change in ownership of real property after the date of the resolution of consideration until 30 days after the date of the adoption of the annexation ordinance, the new owner of the real property shall be considered the eligible owner of real property.~~
- (8) ~~The board of elections shall accept signatures on the petition until 130 days after the adoption of the annexation ordinance.~~
- (9) ~~The determination of the results by the board of elections of the petition period shall be observed by three property owners from the area proposed for annexation, chosen by lot by the board of elections from among those who request to serve in this role, and three persons designated by the municipality. A majority of the property owners of a single parcel of real property must sign the petition before the board of elections may count that parcel as having submitted a petition to deny annexation.~~
- (10) ~~Within 10 business days after the close of the signature period, the board of elections shall certify to the municipal governing body the number of petitions signed by eligible property owners of the real property located within the area described in the annexation ordinance.~~
- (11) ~~If the board of elections delivers to the municipal governing board petitions signed by eligible property owners of at least sixty percent (60%) of the parcels located within the area described in the annexation ordinance as provided in this subsection, the annexation shall be terminated and the municipality may not adopt a resolution of consideration for the area described in the annexation ordinance for at least 36 months.~~
- (12) ~~This subsection shall not apply to any property owner of real property located within the area described in the annexation ordinance that is completely surrounded by the municipality's primary corporate limits.~~
- (13) ~~any annexation under this Part. The municipality shall reimburse the board or boards of elections the costs of the petition process referendum required under this subsection. G.S. 160A-58.64.~~

(j) Effect of Annexation Ordinance. – From and after the effective date of the annexation ordinance, the territory and its citizens and property shall be subject to all debts, laws, ordinances, and regulations in force in such municipality and shall be entitled to the same privileges and benefits as other parts of such municipality.

(k) Reserved.

(l) Reserved.

(m) Simultaneous Annexation Proceedings. – If a municipality is considering the annexation of two or more areas which are all adjacent to the municipal boundary but are not adjacent to one another, it may undertake simultaneous proceedings under authority of this Part for the annexation of such areas.

(n) Remedies for Failure to Provide Services. – If, not earlier than 30 days after the effective date of annexation and not later than 15 months from the effective date of annexation,

any property owner in the annexed territory shall believe that the municipality has not followed through providing services as set forth in the report adopted under G.S. 160A-58.53 and subsection (e) of this section, the property owner may apply for a writ of mandamus. Relief may be granted by the judge of superior court if the municipality has not provided the services set forth in its plan submitted under the provisions of G.S. 160A-58.53(3)a. on substantially the same basis and in the same manner as such services were provided within the rest of the municipality prior to the effective date of annexation and those services are still being provided on substantially the same basis and in the same manner within the original corporate limits of the municipality. If a writ is issued, costs in the action, including reasonable attorneys' fees for such aggrieved property owner, shall be charged to the municipality.

(o) Reports to the Local Government Commission. – The municipality shall report to the Local Government Commission as follows:

- (1) As to whether police protection, fire protection, solid waste services, and street maintenance services were provided in accordance with G.S. 160A-58.53(3)a., within 30 days after the effective date of the annexation. Such report shall be filed no more than 30 days following the expiration of the 30-day period. If the Local Government Commission determines that the municipality failed to deliver police protection, fire protection, solid waste services, or street maintenance services as provided for in G.S. 160A-58.53(3)a. within 30 days after the effective date of the annexation, the Local Government Commission shall notify the municipality that the municipality may not count any of the residents as part of the population of the municipality for the purpose of receiving any State, federal, or county dollars distributed based on population until all of the services are provided.
- (2) As to whether the extension of water and sewer lines was completed within the time period specified in G.S. 160A-58.53(3), within six months after the effective date of the annexation ordinance, and again within three and one-half years of the effective date of the annexation ordinance or upon the completion of the installation, whichever occurs first. If the municipality failed to deliver either water or sewer services, or both, as provided for in G.S. 160A-58.53(3)b. within three and one-half years after the effective date of the annexation, the municipality shall stop any other annexations in progress and may not begin any other annexation until the water and sewer services are provided. The municipality shall adopt a resolution of consideration to begin again any annexation that is stopped due to this subdivision."

SECTION 4. G.S. 160A-58.51(2) reads as rewritten:

"(2) Eligible property owner. – A property owner who is eligible to sign a petition to deny an annexation ordinance or a property owner who is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner. A property owner is eligible to sign a petition to deny an annexation ordinance if the property owner held a freehold interest in the property, determined as of the date of the resolution of consideration. A property owner is eligible to be notified of the opportunity to have water lines and sewer lines and connections installed at no cost to the property owner if that property owner held a freehold interest in the real property to be annexed as of the date of the combined notice of public informational meeting and public hearing."

SECTION 5. G.S. 160A-60(a) reads as rewritten:

"(a) Within 60 days following the close of the signature period under ~~G.S. 160A-58.55(i)~~, adoption of the annexation ordinance, any property owner of real property located within the area described in the annexation ordinance who believes that property owner will suffer material injury by reason of the failure of the municipal governing board to comply with the procedure or to meet the requirements set forth in this Part as they apply to the annexation may file a petition in the superior court of the county in which the municipality is located seeking review of the action of the governing board."

SECTION 6. This act becomes effective July 1, 2012, and applies to any annexation ordinance adopted under Part 7 of Article 4A of Chapter 160A of the General Statutes on or after that date.

In the General Assembly read three times and ratified this the 30th day of May, 2012.

s/ Walter H. Dalton
President of the Senate

s/ Thom Tillis
Speaker of the House of Representatives

This bill having been presented to the Governor for signature on the 31st day of May, 2012 and the Governor having failed to approve it within the time prescribed by law, the same is hereby declared to have become a law. This 10th day of June, 2012.

s/ Karen Jenkins
Enrolling Clerk